

**ASSEMBLY BILL**

**No. 1077**

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**Introduced by Assembly Member Holden**

February 27, 2015

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An act to amend Section 14305 of the Corporations Code, relating to mutual water companies.

LEGISLATIVE COUNSEL'S DIGEST

AB 1077, as introduced, Holden. Mutual water companies: open meetings.

Under existing law, a mutual water company is defined as a corporation organized for or engaged in the business of selling, distributing, supplying, or delivering water for irrigation or domestic purposes that provides in its articles or bylaws that the water shall be sold, distributed, supplied, or delivered only to owners of its shares, as specified.

A mutual water company may be organized under the General Corporation Law or the Nonprofit Mutual Benefit Corporation Law. The Mutual Water Company Open Meeting Act authorizes an eligible person, upon 24 hours advance written notice, to attend meetings of the board of directors of a mutual water company that operates a public water system, except when the board adjourns to, or meets solely in, executive session.

This bill would prohibit a mutual water company from meeting solely in an executive session without holding a meeting. The bill would require a board of directors of a mutual water company to allow an eligible person to personally attend a meeting of the board, if the eligible person gave the board at least 24 hours advance written notice of his or her intent to personally attend the meeting. The bill would require

the board to allow an eligible person who was denied attendance at a meeting for failure to provide this notice to be able to attend the meeting by technology that allows the eligible person to hear the meeting and verbally interact with the board, and would further require the board to provide to an eligible person attending a meeting by technology a copy of the documents to be discussed at the meeting, as specified.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 14305 of the Corporations Code is  
2 amended to read:

3 14305. (a) (1) This section shall be known and may be cited  
4 as the Mutual Water Company Open Meeting Act.

5 (2) This section shall only apply to a mutual water company  
6 that operates a public water system.

7 ~~(b) Any eligible person, upon~~ (1) *A board of directors of a*  
8 *mutual water company shall allow an eligible person to personally*  
9 *attend a meeting of the board, if the eligible person gave the board*  
10 *at least 24 hours advance written notice, may of his or her intent*  
11 *to personally attend meetings of the board the meeting. An eligible*  
12 *person denied attendance at a meeting of the board for failure to*  
13 *provide this notice shall be able to attend the meeting by*  
14 *technology that allows the eligible person to hear the meeting and*  
15 *verbally interact with the board, including, but not limited to, a*  
16 *telephone or computer. The board shall provide to an eligible*  
17 *person attending a meeting by technology, before the meeting*  
18 *begins, a copy of all documents to be discussed at the meeting. A*  
19 *board of directors of a mutual water company shall not prohibit*  
20 *an eligible person from attending a meeting of the board either in*  
21 *person or by technology in compliance with this paragraph.*

22 (2) ~~A board of directors of a mutual water company, except~~  
23 ~~when the board adjourns to, or meets solely in, company shall only~~  
24 *meet in executive session during a meeting. A board may prohibit*  
25 *an eligible person from attending an executive session to consider*  
26 *litigation, matters relating to the formation of contracts with third*  
27 *parties, member or shareholder discipline, personnel matters, or*  
28 *to meet with a member or shareholder, upon the member or*

1 shareholder's request, regarding the member or shareholder's  
2 payment of assessments, as specified in Section 14303. ~~The~~

3 (3) ~~The board of directors of the a mutual water company shall~~  
4 meet in executive session, if requested by a member or shareholder  
5 who may be subject to a fine, penalty, or other form of discipline,  
6 and the member shall be entitled to attend the executive session.

7 ~~As specified in paragraph (3) of subdivision (o), an~~

8 (4) ~~An eligible person shall be entitled~~ allowed to attend a  
9 teleconference meeting, *as specified in paragraph (3) of*  
10 *subdivision (o), or the portion of a the teleconference meeting that*  
11 *is open to eligible persons, and that persons, without fulfilling the*  
12 *notice requirement in paragraph (1). The teleconference meeting*  
13 *or portion of the meeting that is open to eligible persons shall be*  
14 *audible to the eligible persons person in a location specified in the*  
15 *notice of the meeting.*

16 (c) Any matter discussed in executive session shall be generally  
17 noted in the minutes of the immediately following meeting ~~that is~~  
18 ~~open to eligible persons. meeting.~~

19 (d) The minutes, minutes proposed for adoption that are marked  
20 to indicate draft status, or a summary of the minutes, of any  
21 meeting of the board of directors of a mutual water company,  
22 conducted on or after January 1, 2014, other than an executive  
23 session, shall be available to eligible persons within 30 days of the  
24 meeting. The minutes, proposed minutes, or summary minutes  
25 shall be provided to any eligible person upon request and upon  
26 reimbursement of the mutual water company's costs for providing  
27 the minutes.

28 (e) The pro forma budget required in Section 14306 shall be  
29 available to eligible persons within 30 days of the meeting at which  
30 the budget was adopted. The budget shall be provided to any  
31 eligible person upon request and upon reimbursement of the mutual  
32 water company's costs.

33 (f) Unless the bylaws provide for a longer period of notice,  
34 eligible persons shall be given notice of the time and place of a  
35 meeting as defined in subdivision (o), except for an emergency  
36 meeting ~~or a meeting that will be held solely in executive session.,~~  
37 ~~at least four days prior to the meeting. Except for an emergency~~  
38 ~~meeting, eligible persons shall be given notice of the time and~~  
39 ~~place of a meeting that will be held solely in executive session at~~  
40 ~~least two days prior to the meeting. Notice shall be given by posting~~

1 the notice in a prominent, publicly accessible place or places within  
2 the territory served by the mutual water company and by mail to  
3 any eligible person who had requested notification of board  
4 meetings by mail, at the address requested by the eligible person.  
5 Eligible persons requesting notice by mail shall pay the costs of  
6 reproduction and mailing of the notice in advance. Notice may  
7 also be given by mail, by delivery of the notice to each unit served  
8 by the mutual water company or, with the consent of the eligible  
9 person, by electronic means. The notice shall contain the agenda  
10 for the meeting.

11 (g) An emergency meeting of the board may be called by the  
12 chief executive officer of the mutual water company, or by any  
13 two members of the board of directors other than the chief  
14 executive officer, if there are circumstances that could not have  
15 been reasonably foreseen which require immediate attention and  
16 possible action by the board, and which of necessity make it  
17 impracticable to provide notice as required by this section.

18 (h) The board of directors of a mutual water company shall  
19 permit any eligible person to speak at any meeting of the mutual  
20 water company or the board of directors, except for ~~meetings of~~  
21 ~~the board held in an executive session.~~ *session outside the presence*  
22 *of eligible persons.* A reasonable time limit for all eligible persons  
23 to speak to the board of directors or before a meeting of the mutual  
24 water company shall be established by the board of directors.

25 (i) (1) Except as described in paragraphs (2) to (4), inclusive,  
26 the board of directors of the mutual water company ~~may~~ *shall* not  
27 discuss or take action on any item at a nonemergency meeting  
28 unless the item was placed on the agenda included in the notice  
29 that was posted and distributed pursuant to subdivision (f). This  
30 subdivision does not prohibit an eligible person who is not a  
31 member of the board from speaking on issues not on the agenda.

32 (2) Notwithstanding paragraph (1), a member of the board of  
33 directors, mutual water company officers, or a member of the staff  
34 of the mutual water company, may do any of the following:

35 (A) Briefly respond to statements made or questions posed by  
36 a person speaking at a meeting as described in subdivision (h).

37 (B) Ask a question for clarification, make a brief announcement,  
38 or make a brief report on his or her own activities, whether in  
39 response to questions posed by an eligible person or based upon  
40 his or her own initiative.

1 (3) Notwithstanding paragraph (1), the board of directors or a  
2 member of the board of directors, subject to rules or procedures  
3 of the board of directors, may do any of the following:

4 (A) Provide a reference to, or provide other resources for factual  
5 information to, the mutual water company's officers or staff.

6 (B) Request the mutual water company's officers or staff to  
7 report back to the board of directors at a subsequent meeting  
8 concerning any matter, or take action to direct the mutual water  
9 company's officers or staff to place a matter of business on a future  
10 agenda.

11 (C) Direct the mutual water company's officers or staff to  
12 perform administrative tasks that are necessary to carry out this  
13 subdivision.

14 (4) (A) Notwithstanding paragraph (1), the board of directors  
15 may take action on any item of business not appearing on the  
16 agenda posted and distributed pursuant to subdivision (f) under  
17 any of the following conditions:

18 (i) Upon a determination made by a majority of the board of  
19 directors present at the meeting that an emergency situation exists.  
20 An emergency situation exists if there are circumstances that could  
21 not have been reasonably foreseen by the board, that require  
22 immediate attention and possible action by the board, and that, of  
23 necessity, make it impracticable to provide notice.

24 (ii) Upon a determination made by the board by a vote of  
25 two-thirds of the members present at the meeting, or, if less than  
26 two-thirds of total membership of the board is present at the  
27 meeting, by a unanimous vote of the members present, that there  
28 is a need to take immediate action and that the need for action  
29 came to the attention of the board after the agenda was posted and  
30 distributed pursuant to subdivision (f).

31 (iii) The item appeared on an agenda that was posted and  
32 distributed pursuant to subdivision (f) for a prior meeting of the  
33 board of directors that occurred not more than 30 calendar days  
34 before the date that action is taken on the item and, at the prior  
35 meeting, action on the item was continued to the meeting at which  
36 the action is taken.

37 (B) Before discussing any item pursuant to this paragraph, the  
38 board of directors shall openly identify the item to the members  
39 in attendance at the meeting.

1 (j) (1) Notwithstanding any other law, the board of directors  
2 shall not take action on any item of business outside of a meeting.

3 (2) (A) Notwithstanding any other provision of law, the board  
4 of directors shall not conduct a meeting via a series of electronic  
5 transmissions, including, but not limited to, electronic mail, except  
6 as specified in subparagraph (B).

7 (B) Electronic transmissions may be used as a method of  
8 conducting an emergency meeting if all members of the board,  
9 individually or collectively, consent in writing to that action, and  
10 if the written consent or consents are filed with the minutes of the  
11 meeting of the board. These written consents may be transmitted  
12 electronically.

13 (k) (1) An eligible person may bring a civil action for  
14 declaratory or equitable relief for a violation of this section by a  
15 mutual water company for which he or she is defined as an eligible  
16 person for a judicial determination that an action taken by the board  
17 is null and void under this section.

18 (2) Prior to the commencement of an action pursuant to  
19 paragraph (1), the eligible person shall make a demand on the  
20 board to cure or correct the action alleged to be taken in violation  
21 of this section. The demand shall be in writing, and submitted  
22 within 90 days from the date the action was taken. The demand  
23 shall state the challenged action of the board and the nature of the  
24 alleged violation.

25 (3) Within 30 days of receipt of the demand, the board shall  
26 cure or correct the challenged action and inform the demanding  
27 party in writing of its actions to cure or correct, or inform the  
28 demanding party in writing of its decision not to cure or correct  
29 the challenged action.

30 (4) Within 15 days of receipt of the written notice of the board's  
31 decision to cure or correct or not to cure or correct, or within 15  
32 days of the expiration of the 30-day period to cure or correct,  
33 whichever is earlier, the demanding party shall commence the  
34 action pursuant to paragraph (1). If the demanding party fails to  
35 commence the action pursuant to paragraph (1), that party shall  
36 be barred from commencing the action thereafter.

37 (l) A board action that is alleged to have been taken in violation  
38 of this section shall not be determined to be void if the action taken  
39 was in substantial compliance with this section.

1 (m) The fact that the board of directors of a mutual water  
2 company takes subsequent action to cure or correct an action taken  
3 pursuant to this section shall not be construed as, or admissible as  
4 evidence of, a violation of this section.

5 (n) An eligible person who prevails in a civil action to enforce  
6 his or her rights pursuant to this section shall be entitled to  
7 reasonable attorney's fees and court costs. A prevailing mutual  
8 water company shall not recover any costs, unless the court finds  
9 the action to be frivolous, unreasonable, or without foundation.

10 (o) As used in this section:

11 (1) "Eligible person" means a person who is any of the  
12 following:

13 (A) A shareholder or member of the mutual water company.

14 (B) A person who is an occupant, pursuant to a lease or a rental  
15 agreement, of commercial space or a dwelling unit to which the  
16 mutual water company sells, distributes, supplies, or delivers  
17 drinking water.

18 (C) An elected official of a city or county who represents people  
19 who receive drinking water directly from the mutual water  
20 company on a retail basis.

21 (D) Any other person eligible to participate in the mutual water  
22 company's meetings under provisions of the company's articles  
23 or bylaws.

24 (2) "Item of business" means any action within the authority of  
25 the board, except those actions that the board has validly delegated  
26 to any other person or persons, officer of the mutual water  
27 company, or committee of the board comprising less than a  
28 majority of the directors.

29 (3) "Meeting" means either of the following:

30 (A) A congregation of a majority of the members of the board  
31 at the same time and place to hear, discuss, or deliberate upon any  
32 item of business that is within the authority of the board.

33 (B) A teleconference in which a majority of the members of the  
34 board, in different locations, are connected by electronic means,  
35 through audio or video or both. A teleconference meeting shall be  
36 conducted in a manner that protects the rights of members of the  
37 mutual water company and otherwise complies with the  
38 requirements of this title. ~~Except for a meeting that will be held~~  
39 ~~solely in executive session, the~~ *The* notice of the teleconference  
40 meeting shall identify at least one physical location so that

1 members of the mutual water company may attend and at least  
2 one member of the board of directors or a person designated by  
3 the board shall be present at that location. Participation by board  
4 members in a teleconference meeting constitutes presence at that  
5 meeting as long as all board members participating in the meeting  
6 are able to hear one another and members of the mutual water  
7 company speaking on matters before the board.  
8 (4) “Mutual water company” means a mutual water company,  
9 as defined in Section 14300, that operates a public water system,  
10 as defined in Section 14300.5.